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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,205	11/25/2003	Katsuya Matsunaga	JP920000208US2	5523
25299	7590	10/05/2006	EXAMINER	
IBM CORPORATION			DABNEY, PHYLESHA LARVINIA	
PO BOX 12195			ART UNIT	PAPER NUMBER
DEPT YXSA, BLDG 002				
RESEARCH TRIANGLE PARK, NC 27709			2615	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/721,205	MATSUNAGA ET AL.	
	Examiner	Art Unit	
	Phylesha L. Dabney	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/2/04 ; 2/22/05</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the Application filed on 25 November 2003 in which claims 1-20 are pending.

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters “17 and 18” has been used to designate both 2 different parts. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “hold member”, “universal joint”, “3 dimensional rotation”, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: the specification fails to describe the "hold member"
included in the claims.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. With respect to the title, there should be some reference that the set type has a 3 dimensional rotation and mountable on different apparatuses.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: relationship of the “hold member”, “stay”, “universal joint”, “speaker unit”, “speaker face” relative to the other elements.

With respect to the “hold member”, it is clear what it is, how it is structured and related to the other elements such that it satisfies the claimed language.

With respect to the “stay”, it is not clear how it is attached to the hold member, universal joint, and/or speaker such that it is capable of achieving a 3 dimensional rotation. It is also not clear how it is structured and related to the other elements such that it satisfies the claimed language.

With respect to the “universal joint”, it is not clear how it is attached to the mounting member, speaker, or stay. It is also not clear how it is structured and related to the other elements such that it satisfies the claimed language.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-6, 10-14, 16, and 18-20** are rejected under 35 U.S.C. 102(e) as being anticipated by B. J. Brown (U.S. Patent No. 3,297,832).

Regarding claims 1-6, Brown teaches an adjustable body set type speaker unit for mounting directly on a user's body or on an apparatus (figs. 1-5) having a varying radius, comprising: a mounting member having a speaker hold member (10), a universal joint portion (15, 25-29) and a rotatable stay (12) coupled thereon for detachably mounting said unit on a user's body or a mounting apparatus, and a directional speaker (10) positioned on said rotatable stay wherein said speaker may be adjusted about said stay to a predetermined distance from a user's ear, wherein said speaker hold member securely positions said directional speaker at said predetermined distance away from a user's ear to form an air gap having a predetermined gap space as determined between said ear and a speaker face of said speaker as claimed.

Regarding claims 10-11 and 18, Brown fails to teach the unit of claim 2 or 8, further comprising a microphone (10, col. 2 lines 5-11).

Regarding claims 12-13 and 19, Brown teaches the unit of claim 2, wherein said

directional speaker comprises at least one directional speaker (10, col. 2 lines 5-11) for a user.

Regarding claim 14, see the rejection of claims 1, 5, and 11-12.

Regarding claim 16, see the rejection of claim 14.

Regarding claim 20, see the rejection of claim 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 7-9, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Zibell (U.S. Patent No. 4,237,449).**

Regarding claims 7-8, 15, and 17, Brown fails to teach the unit of claim 2, further comprising a bone-conduction type speaker as claimed.

Zibell teaches the unit (fig. 3, G) further comprising a bone-conduction type speaker (35, 39) as claimed for contacting a mastoid as an alerting device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a bone-conduction type speaker with the unit of Brown, as taught by Zibell, for providing an alerting means.

Regarding claim 9, the combination of Brown in view of Zibell teaches the unit of claim 8, further comprising an urging member for generating an urging force for placing said bone-conduction type speaker in contact with user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P O Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

Hand-delivered responses should be brought to:

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Randolph Building
401 Dulany Street
Alexandria, VA 22314

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Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 28, 2006



PLD



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